

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN WILLIAM UPSHAW,

Petitioner,

v.

CSP LOS ANGELES,

Respondent.

Case No. 1:22-cv-00898-SAB-HC

ORDER DIRECTING CLERK OF COURT
TO SEND PETITIONER COPY OF
PETITION AND CLOSE CASE

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On July 25, 2022, the Court ordered Petitioner to show cause why the petition should not be dismissed for failure to exhaust state court remedies. (ECF No. 4.) On August 11, 2022, Petitioner filed his response, stating that he was attempting to file the petition in the California Supreme Court. Petitioner requests that the Court return the petition along with the address of the California Supreme Court.¹ (ECF No. 6.)

The Court construes Petitioner's response to the order to show cause as a notice of dismissal. See Castro v. United States, 540 U.S. 375, 381–82 (2003) (courts may recharacterize a pro se motion to “create a better correspondence between the substance of a pro se motion’s

¹ According to the California Courts website, the mailing address of the Supreme Court of California is 350 McAllister Street, San Francisco, CA 94102-4797.

claim and its underlying legal basis”); Bernhardt v. Los Angeles County, 339 F.3d 920, 925 (9th Cir. 2003) (courts have a duty to construe pro se pleadings and motions liberally). Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Voluntary dismissal under this rule requires no action on the part of the court and divests the court of jurisdiction upon the filing of the notice of voluntary dismissal. See United States v. 475 Martin Lane, 545 F.3d 1134, 1145 (9th Cir. 2008) (describing consequences of voluntary dismissals pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)). In this case, Respondent has not served either an answer or a motion for summary judgment. Thus, Petitioner’s notice of dismissal was effective upon filing and without a court order pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

For the sake of clarity, in light of the notice of dismissal, IT IS HEREBY ORDERED that the Clerk of the Court is DIRECTED to:

1. Send Petitioner a copy of his petition for writ of habeas corpus; and
2. Close the case.

IT IS SO ORDERED.

Dated: August 26, 2022


UNITED STATES MAGISTRATE JUDGE